IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.321/2001

Suresh Kumar S/o Shri Mohan Das
...defendant-appellant
Versus
Shri Gajendra Singh & Others
...plaintiff-respondents

Date of Order ::: 06.10.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Arjun Karnani, Counsel for defendant-appellant
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By the Court:-

Heard learned counsel for the defendant-appellant.

The plaintiff-respondents filed a suit for ejectment on the ground of default and subletting. The plaintiffs led their evidence but no evidence was led on behalf of the defendant-appellant in spite of service of notice. However, the counsel for the defendant remained present during the course of proceedings before the lower court. The lower court, after considering the evidence on the record, decreed the suit of the plaintiffs. Being aggrieved with the same, an appeal was preferred by the defendant before the first appellate court, which was dismissed by the impugned judgment.

The learned counsel for the defendant-appellant submits that it was a case wherein no evidence was led on behalf of the defendant-appellant, therefore, ex-parte decree should have been passed and in support of

his contention he referred Prakash Chander Vs. Smt. Janki Manchanda – AIR 1987 SC 42.

I have considered the submissions of the learned counsel for the defendant-appellant. This is a case wherein the counsel for the defendant remained present during the course of proceedings before the lower court and even at the time of final judgment he was present and his attendance was marked in the judgment. In these circumstances, the above referred judgment in the case of Prakash Chander Vs. Smt. Janki Manchanda (supra) is not at all applicable in the facts and circumstances of the present case and I do not find any merit in the contention of the learned counsel for the defendant-appellant. There is concurrent finding of fact relating to subletting, by both the courts below, which cannot be interfered with by this court in second appeal under Section 100 of the Code of Civil Procedure, 1908.

No substantial question of law is involved in this second appeal and the same is dismissed in limine.

(Narendra Kumar Jain) J.

//Jaiman//